

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

JOE COMES and RILEY PAINT, INC., an Iowa corporation,	:	No. CV 05-562
	:	
Plaintiffs,	:	
v.	:	
MICROSOFT CORPORATION, a Washington corporation,	:	
	:	
Defendant.	:	
	:	

**MICROSOFT'S MOTION TO STAY ALL PROCEEDINGS
PENDING TRANSFER BY THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

Microsoft hereby moves this Court to stay all proceedings in this case (other than compliance with the existing orders of the state court from which this action was removed) pending transfer of the case by the Judicial Panel on Multidistrict Litigation to the United States District Court for the District of Maryland, pursuant to 28 U.S.C. § 1407. In support of its motion, Microsoft attaches hereto as Exhibit A Microsoft's Notice of Tag-Along Action respecting this action, filed with the Judicial Panel on Multidistrict Litigation on October 13, 2005; as Exhibit B, the Order Appointing Special Master filed in this case by the Iowa District Court for Polk County on July 6, 2005; and as Exhibit C, the Amended and Substituted Pretrial Scheduling Order, filed by the Iowa state court on July 7, 2005.

The grounds for this motion are set forth in Microsoft's memorandum in support of its motion submitted herewith and incorporated herein as if fully set forth.

Dated: October 13, 2005

Of Counsel:

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Respectfully submitted,

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Attorneys for Microsoft Corporation

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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE:
MICROSOFT CORP. WINDOWS OPERATING
SYSTEMS ANTITRUST LITIGATION)
MDL Docket No. 1332)

NOTICE OF POTENTIAL "TAG-ALONG" ACTION

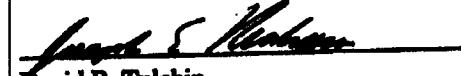
Pursuant to the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, Microsoft Corporation hereby provides notice of another action that is pending against it in federal district court and is related to the actions subject to the Judicial Panel's Transfer Order of April 25, 2000. The action, styled *Joe Comes and Riley Paint, Inc. v. Microsoft Corporation*, is pending in the United States District Court for the Southern District of Iowa and has been assigned civil action number CV 05-562.

EXHIBIT

A

Dated: October 13, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Ryan C. Williams, hereby certify that I caused a copy of the foregoing Notice of Potential "Tag-Along" Action to be served on October 13, 2005 by facsimile and first class mail upon:

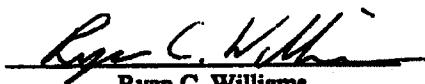
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Ryan C. Williams

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOE COMES and RILEY PAINT, INC. :
an Iowa corporation,
Plaintiffs,
v.
MICROSOFT CORPORATION, :
a Washington corporation,
Defendants.

No. CL82311

FILED
POLK COUNTY, IA.
05 JUL -6 PM 2:46
CLERK DISTRICT COURT
DJS June 6,

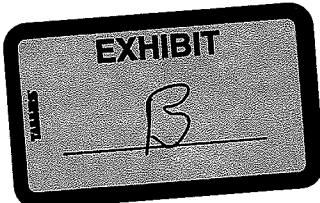
ORDER APPOINTING SPECIAL MASTER

The above-entitled matter came before the Honorable Scott D. Rosenberg on June 6, 2005.

WHEREAS the parties have advised the Court that, based on the scope of the allegations in the Third Amended Petition, and on their respective expectations, that there will likely be a large number – perhaps thousands – of exhibits designated for trial, and that many of those exhibits may be the subject of objection on grounds other than relevance, and

WHEREAS the parties have further advised the Court that there will likely also be a large number – perhaps many thousands – of lines of prior testimony designated to be played or read to the jury in this action, and that many of those may also be the subject of objection on grounds other than relevance, and

WHEREAS the parties have jointly requested that the Court appoint a Special Master to rule on objections to trial exhibits and designations of prior testimony, and



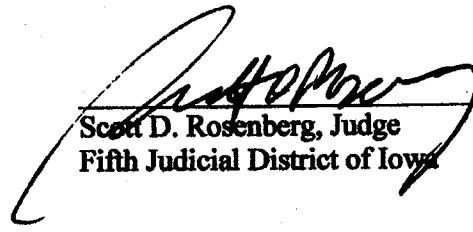
WHEREAS the parties have further agreed on the appointment of Mark McCormick of the firm of Belin, Lamson, McCormick, Zumbach & Flynn in Des Moines, Iowa, as said Special Master, and

WHEREAS Mr. McCormick has disclosed to the parties that he has previously represented the Court in a private matter, and the parties have waived any objections to Mr. McCormick serving based on that fact,

NOW THEREFORE the Court ORDERS as follows:

1. The Court finds that exceptional circumstances exist within the meaning of Iowa R. Civ. P. 1.935 requiring the appointment of a Special Master.
2. Pursuant to the parties' agreement, the Court appoints Mark McCormick to serve as a Special Master. Mr. McCormick shall have all the powers set forth in Iowa R. Civ. P. 1.937. Mr. McCormick shall rule on all objections to trial exhibits and to prior testimony, including claims of privilege or non-responsiveness except that objections under Iowa R. Evid. 5.401, 5.402, or 5.403, or other objections that can be made only in light of the trial record, may be made at trial. The parties may seek *de novo* review of Mr. McCormick's findings pursuant to a schedule to be established.
3. The parties shall split Mr. McCormick's fees equally.
4. The Court requests that Mr. McCormick meet with the parties after a Pretrial Scheduling Order is entered in this case to establish a process for resolving objections, including assisting the parties in arriving at appropriate stipulations. The schedule shall stage the parties' designations and objections so that rulings by the Special Master are made on a rolling basis, the final ruling of which will be required to be made by the deadline set forth in the Pretrial Scheduling Order.

Dated: July 6, 2005



Scott D. Rosenberg, Judge
Fifth Judicial District of Iowa

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

JOE COMES and RILEY PAINT, INC. an Iowa corporation,	:	No. CL82311
Plaintiffs,	:	
v.	:	
MICROSOFT CORPORATION, a Washington corporation,	:	
Defendants.	:	

POLK COUNTY, IA.
FILED
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CLERK DISTRICT COURT

AMENDED AND SUBSTITUTED PRE-TRIAL SCHEDULING ORDER

IT IS HEREBY ORDERED that the following pretrial schedule shall apply in this matter:

Deadline for motions to amend petition and for adding additional parties	September 16, 2005 (52 weeks from trial date)
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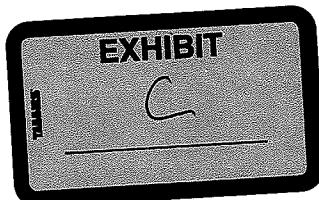
Court to appoint Special Master ¹	October 14, 2005 (48 weeks from trial date)
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Special Master, after having met with parties, shall issue a schedule for the parties' designation of trial exhibits and prior testimony and their respective objections thereto. ²	November 11, 2005 (44 weeks from trial date)
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Plaintiffs to disclose expert witnesses and serve expert reports and supporting back-up material	March 3, 2006 (28 weeks from trial date)
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¹ In its Order appointing a Special Master, the Court will define the duties of the Special Master and establish the procedure for any appeals of the Special Master's rulings.

² Objections under Iowa R. Evid. 5.401, 5.402, or 5.403 are to be resolved by the Court in motions in limine or at trial.



Deadline for depositions of plaintiffs' experts	April 14, 2006 (22 weeks from trial date)
Defendants to disclose expert witnesses and serve expert reports and supporting back-up material	April 21, 2006 (21 weeks from trial date)
Deadline for depositions of defendant's experts	June 2, 2006 (15 weeks from trial date)
Close of fact discovery (including due dates for responses to any written discovery)	June 2, 2006 (15 weeks from trial date)
Plaintiffs' initial disclosure of witnesses to be called at trial	June 2, 2006 (15 weeks from trial date)
Deadline for filing dispositive motions	June 9, 2006 (14 weeks from trial date)
Plaintiffs to disclose rebuttal expert witnesses and serve expert reports and supporting back-up material	June 9, 2006 (14 weeks from trial date)
Defendant's initial disclosure of witnesses to be called at trial	June 23, 2006 (12 weeks from trial date)
Deadline for resistances to dispositive motions	June 30, 2006 (11 weeks from trial date)
Deadline for depositions of plaintiffs' rebuttal experts	June 30, 2006 (11 weeks from trial date)
Deadline for replies to dispositive motions	July 14, 2006 (9 weeks from trial date)
Deadline for plaintiffs to make final disclosure of live witnesses	July 14, 2006 (9 weeks from trial

	date)
Deadline for motions in limine	July 21, 2006 (8 weeks from trial date)
Hearing on dispositive motions	July 28, 2006 (7 weeks from trial date)
Deadline for completion of rulings by Special Master on trial exhibits and prior testimony designations	July 28, 2006 (7 weeks from trial date)
Deadline for defendants to make final disclosure of live witnesses	July 28, 2006 (7 weeks from trial date)
Deadline for resistances to motions in limine	August 4, 2006 (6 weeks from trial date)
Hearing on motions in limine	August 18, 2006 (4 weeks from trial date)
Submission of preliminary jury instructions	August 25, 2006 (3 weeks from trial date)
Final hearing on appeals of rulings by special master, objections to trial exhibits and prior testimony designations	September 1, 2006 (2 weeks from trial date)
Final pre-trial conference, hearing on preliminary jury instructions	September 8, 2006 (1 week from trial date)
Trial	September 18, 2006

All motions and other documents are to be served by hand, e-mail, fax, or by next-day delivery, unless the parties agree otherwise.

DATED this 22 day of July, 2005.



Judge, District Court

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Plaintiffs,	:	
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MICROSOFT CORPORATION, a Washington corporation,	:	
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Defendant.	:	
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**MICROSOFT'S APPENDIX OF UNPUBLISHED AUTHORITIES
IN SUPPORT OF ITS MOTION TO STAY ALL PROCEEDINGS
PENDING TRANSFER BY THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

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ADDENDUM OF UNPUBLISHED AUTHORITIES

<i>In re Microsoft Corp. Antitrust Litig.</i> , No. 1332 (J.P.M.L. Apr. 25, 2000)	Tab A
<i>Quigley v. Microsoft Corp.</i> , No. 99-3420 (E.D. La. Jan. 13, 2000)	Tab B
<i>Birdsong Tractor & Supply, Inc. v. Microsoft Corp.</i> , No. 4:03CV00474, (E.D. Ark. July 23, 2003)	Tab C
<i>Bruce v. Microsoft Corp.</i> , No. 4:02cv234-P-B (N.D. Miss. Oct. 24, 2002)	Tab D
<i>Sujan v. Microsoft Corp.</i> , No. 02-2827 (C.D. Cal. May 20, 2002)	Tab E
<i>Automatik Design, Inc. v. Microsoft Corp.</i> , No. 01-3454 (E.D. La. Dec. 5, 2001)	Tab F
<i>Strickley v. Microsoft Corp.</i> , No. 00-35 (E.D. Ky. Apr. 17, 2000)	Tab G
<i>Pryor v. Microsoft Corp.</i> , No. 00-165 (D.N.J. Feb. 28, 2000)	Tab H
<i>Weinke v. Microsoft Corp.</i> , No. 99-C-1505 (E.D. Wis. Feb. 18, 2000)	Tab I
<i>Tyler v. Microsoft Corp.</i> , No. 99-CV-2602-L (S.D. Cal. Feb. 4, 2000)	Tab J
<i>To the Rescue Comprehensive Computer Servs. v. Microsoft Corp.</i> , No. 99-3301 (S.D. Fla. Jan. 4, 2000)	Tab K
<i>Boudreaux v. Metro. Life Ins. Co.</i> , No. 95-138, 1995 WL 83788 (E.D. La. Feb. 24, 1995)	Tab L
<i>Egon v. Del-Val Fin. Corp.</i> , No. 90-4338, 1991 WL 13726 (D.N.J. Feb. 1, 1991)	Tab M
<i>Pepsi-Cola Bottling Co. v. Cargill, Inc.</i> , No. 3-95-784, 1995 WL 783610 (D. Minn. Oct. 20, 1995)	Tab N
<i>Am. Seafood, Inc. v. Magnolia Processing, Inc.</i> , No. 92-1030, 1992 WL 102762 (E.D. Pa. May 7, 1992)	Tab O

Rosenfeld v. Hartford Fire Ins. Co.,
No. 88-2153, 1988 WL 49065 (S.D.N.Y. May 12, 1988) Tab P

Cheeseman v. Microsoft Corp.,
No. 2:99-CV-396 (D. Vt. Feb. 29, 2000) Tab Q